

(2011) 11 MAD CK 0313

In the Madras High Court

Case No : Writ Petition No. 18814 of 2011 and M.P. No's. 1 to 3 of 2011

G. Victor Jesudoss Correspondent ELM Fabricius Higher
Secondary School Puraswalkkam, Chennai - 600007

APPELLANT

Vs

The Director of School Education D.P.I. Complex,
Nungambakkam Chennai - 600006 and Others

RESPONDENT

Date of Decision : 10-11-2011

Acts Referred:

Citation : (2011) 11 MAD CK 0313

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : A.P. Rajaprabhu, for the Appellant; I. Arokiasamy Government Advocate for Respondents 1 to 3, No Appearance for Respondent 4 and Mr. Manisundargopal for Respondent 5, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—Even though, the interim applications are listed before me, by consent, the writ petition itself is taken up for final hearing.

2.This writ petition has been filed by the petitioner who has been appointed for a brief period by the Bishop which was cancelled by the order of the learned Administrator appointed by this Court. In order to understand the issues involved in this writ petition, the factual background surrounding the case will have to be discussed.

3.The fifth respondent was appointed as a Correspondent of E.L.M. Fabricius Higher Secondary School by the Church Council in June 2001. The appointment made was subsequently continued by the Church Council. Accordingly, he was appointed to act as a Correspondent for the period of Triennium 2010-2013. A series of civil litigations have been initiated by different parties. During the pendency of litigations, the Bishop issued proceedings dated 14.09.2010 invoking the emergency powers and dissolved the Church Council. The Bishop also issued

several orders of appointments and transfers by appointing new correspondents and removing the existing correspondents. A comprehensive order was passed by this Court in C.R.P.(MD) No. 2385 and 2386 of 2010 restoring the elected Church Council. The relevant directions issued by this Court in and by the common order dated 14.12.2010 are extracted hereunder:

(a) Mr. Justice J. Kanakaraj, (Retd.) is appointed as the Administrator of Tamil Evangelical Lutheran Church;

(b) The Church Council elected in May 2010, with the Bishop as its President shall henceforth function, till the disposal of the main suits (for which separate directions are issued hereunder), under the guidance, supervision and control of the Administrator;

(c) The elected Members of the Church Council, who have opened (or broken opened) the Central Office of the institution at Trichy and taken over the records, pursuant to the interim order passed by the Sub Judge, Trichy, shall hand over all the records to the Administrator within a week;

(d) The Bishop/President shall hand over all the records relating to the transfers, postings and appointments made on and from 14.09.2010, to the Administrator. The Administrator shall scrutinize these records, hear the parties affected by such transfers, postings and appointments and pass appropriate orders, within six weeks from the date of receipt of a copy of this order. Those orders shall be binding on (i) the Bishop/President; (ii) the Church Council; and (iii) persons who are subjected to such transfers and postings. I am making the decision of the Administrator binding even on the persons who are subjected to transfers and postings, for the simple reason that though the Church Council has challenged such transfers and postings ordered by the Bishop/President after 14.09.2010, those affected parties have not chosen to come to Court. Therefore, I am making them bound by the decision of the Administrator, especially in view of the fact that the Administrator has also been directed to hear them before passing final orders;

4. Accordingly, the learned Administrator was directed to scrutinize the records pertaining to transfers, postings and appointments and pass appropriate orders. It has been made clear that a decision taken by the learned Administrator would be binding on the Bishop/President who overturned the earlier orders of appointments, the Church Council and the persons who are subjected to such postings. A review and direction applications have been filed which have been disposed of by this Court subsequently. In accordance with the direction issued by this Court in the revision petition which has become final, the learned Administrator has passed the following order, after considering the relevant materials available on record. The said order passed by the learned Administrator is extracted hereunder:

That the Correspondents appointed by the Church Council after its Election and before the Bishop assumed power under Rule 194(1) shall alone continue as

lawful correspondents and transact all business ignoring all the appointments by the Bishop after 14.09.2010.

5. Thereafter, the Church Council in its meeting held on 26.04.2011 was pleased to appoint the fifth respondent as the Correspondent of the School once again. In pursuant to the order passed, approval has been sought for the restoration of the appointment of the fifth respondent. The third respondent after considering the relevant materials available on record has accorded the approval. Challenging the same, the present writ petition has been filed.

Submissions of the petitioner:

6. The main contention of the learned counsel for the petitioner is that a complaint has been given which has been taken on file in Crime No. 86 of 2011 against the fifth respondent. Therefore in view of the same, the fifth respondent shall not be allowed to continue as a Correspondent. While appointing the fifth respondent, the third respondent has not given any opportunity to the petitioner. Inasmuch as a compliant has been given by the petitioner against the fifth respondent, there is every possibility that the said respondent would tamper with the records prejudicing the pending criminal case against him. Hence, the learned counsel submitted that the writ petition will have to be allowed by setting aside the order impugned and consequently, the petitioner will have to be reinstated as a Correspondent.

Submissions of the fifth respondent:

7. Per contra, Mr.Manisundargopal, learned counsel appearing for the fifth respondent submitted that the learned Administrator has exercised the power in accordance with the directions issued by this Court in C.R.P.(MD) No. 2385 of 2010 and 2386 of 2010. The order passed by the Bishop appointing the petitioner as a Correspondent was found to be improper and therefore, the petitioner has got no legal right to challenge the appointment of the fifth respondent. The petitioner has not challenged the decision of the learned Administrator. The learned Administrator has appointed the fifth respondent by taking into consideration of the interest of the School. The compliant has been given after 55 days after the appointment of the learned Administrator. The appointment of the fifth respondent has been made in pursuant to the meeting held by the Church Council on 26.04.2011. The petitioner having appointed earlier as a Correspondent by Bishop and that decision was found to be not proper by this Court which has become final cannot question the appointment of the fifth respondent. Therefore, the learned counsel submitted that the writ petition will have to be dismissed.

Discussions:

8. Admittedly the direction issued by this Court referred supra have become final and the learned Administrator has acted in accordance with the same. Consequently, an order was passed by the learned Administrator on 07.03.2011

permitting the Correspondents appointed earlier by the Church Council after the election and before the Bishop assumed power to continue as lawful Correspondents and transit all business ignoring all the appointments made by the Bishop after 14.09.2010. The petitioner is very well aware of the direction issued by this Court as well as the consequential direction issued subsequently. There is absolutely no averment or whisper in the affidavit filed in support of this writ petition to the effect that the petitioner was not aware of the same. A perusal of the direction issued by this Court would show that it is binding on the concerned parties. The power of the learned Administrator to act in pursuant to the directions of the Honourable High Court is not denied or disputed by the petitioner.

9. In fact, the petitioner in the affidavit filed in support of this writ petition has specifically stated that about the orders passed by this Court in C.R.P.(MD) No. 2385 of 2010 and 2386 of 2010. The petitioner has also admitted the fact that the learned Administrator has been vested with all the powers to scrutinize the records. The power of the learned Administrator to decide any issue was also admitted by the petitioner.

10. In view of the facts narrated above, the petitioner cannot maintain this writ petition. The petitioner has neither taken any steps to review the order passed by this Court in C.R.P.(MD) No. 2385 of 2010 and 2386 of 2010 nor challenged the decision made by the learned Administrator as well as the consequential appointments made by the Church Council. It is not in dispute that the petitioner was relieved and the fifth respondent has been once again made as a Correspondent. The decision of the Bishop in making the new appointments even while the earlier Correspondent was functioning during the tenure was found to be wrong and therefore, the petitioner cannot make any reliance upon the said wrong decision. What is challenged in this writ petition is nothing but the approval granted by the third respondent. The petitioner without challenging the decision of the learned Administrator which has become final as per the directions of this Court and the appointments made by the Church Council cannot seek to challenge the subsequent the approval given by the third respondent.

11. The matter can be looked out from a different angle as well. When the appointment of the petitioner was found to be illegal and improper, he cannot question the appointment of the fifth respondent as he has got no locus standi to do so. The relief sought for in the writ petition is to quash the approval granted by the third respondent in favour of the fifth respondent with a consequential approval to reinstate the petitioner as Correspondent. The right of the petitioner to reinstate as Correspondent is different and it is not consequent to the approval made to the appointment of the third respondent. As the petitioner has not chosen to challenge his removal by the learned Administrator as per the directions of this Court, he cannot challenge the appointment made in favour of the fifth respondent.

12. The contention raised by the learned counsel for the petitioner that in view of

the pendency of the complaint given by the petitioner against the fifth respondent, the third respondent ought not to have given the approval, cannot be accepted, for the reason that the learned Administrator who is a man of high repute has made the recommendation by taking into consideration of the interest of the Institution, which has been approved by the third respondent. A mere pendency of a complaint that too given by the petitioner himself even while the learned Administrator was in charge cannot be a bar in law for the fifth respondent to act as a Correspondent. The petitioner has not produced any material to show that in law the fifth respondent cannot be allowed to function as a Correspondent in view of the registration of a complaint. Further, the petitioner cannot represent the Institution or the Church Council being an interested person and this writ petition has been filed by the petitioner in his personal capacity.

13. Therefore for the reasons stated above, this Court is of the view that the writ petition as filed by the petitioner is totally misconceived and without any basis. To appoint an appropriate person in a particular post is the prerogative of the Church Council who is the competent authority in law. When the Church Council and the learned Administrator have thought it fit to appoint the fifth respondent, the petitioner has no manner of right to question the same.

14. The writ petition is dismissed accordingly. No costs.

Consequently, connected miscellaneous petitions are closed.